

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

JULIUS KEVIN EDWARDS,)	
)	
Petitioner,)	
)	
v.)	1:09CV528
)	
ROY COOPER,)	
)	
Respondent.)	

RECOMMENDATION AND ORDER
OF UNITED STATES MAGISTRATE JUDGE

Petitioner, a state prisoner, has submitted a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 along with the five dollar filing fee. The Clerk of Court received the submission on July 13, 2009, which Petitioner had dated as of July 9, 2009. This petition cannot be further processed because court records reveal that Petitioner has already attacked the same conviction and sentence in a previous § 2254 petition [1:06CV823]. Consequently, Petitioner must apply to the Fourth Circuit Court of Appeals for an order authorizing this district court to consider the current petition. This is required by 28 U.S.C. § 2244(b)(3)(A). See AO 241 (MDNC 3/97), *Instructions*, paragraph 5, which is enclosed. Because of this pleading failure, this particular petition should be dismissed.

IT IS THEREFORE RECOMMENDED that this petition be dismissed for failure to apply to the Fourth Circuit Court of Appeals for an order authorizing this district court to consider the current petition as is required by 28 U.S.C. § 2244.

IT IS FURTHER ORDERED that the Clerk shall send Petitioner a copy of this Recommendation and Order and instruction forms for filing § 2254 petitions in this Court and Motions for Authorization in the court of appeals, an application to proceed *in forma pauperis* (upon request), and four copies of § 2254 petition forms (more copies will be sent on request). Petitioner should keep the original and two copies of the § 2254 petition which can be submitted in this Court if Petitioner obtains approval from the Fourth Circuit.

/s/ Donald P. Dietrich
Donald P. Dietrich, U.S. Magistrate Judge

July 23, 2009